IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

Bail Appl..No. 6503 of 2007()

[CRIME NO.332/2007 OF HOSDURG POLICE STATION]

: PETITIONER/ACCUSED

K.KUSHALAN, AGED 37 YEARS,
RESIDING AT KARIVALAM, PADANNEKKAD P.O.,
KASARGOD DISTRICT.

BY ADV. SRI.T.MADHU

RESPONDENTS: COMPLAINANT

THE STATION HOUSE OFFICER,
HOSDURG POLICE STATION, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 24/10/2007 ALONG WITH BA NOS.6504 & 6505/07. THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.Nos.6503, 6504 & 6505 of 2007

Dated this the 24th day of October 2007

O R D E R

These applications by the common petitioner are for anticipatory bail. The petitioner faces allegations under Section 409 I.P.C. These crimes have been registered on the basis of private complaints filed by the complainants who are subscribers to Sri.Vairajathan Kuries of which the petitioner was a collecting agent. The crux of the allegations against the petitioner in all the three complaints is that the amounts received from the subscribers though acknowledged in the pass book issued to them are not remitted to the accounts of the Vairajathan Kuries. It is alleged that an amount of Rs.1,000/-, Rs.14,000/- and Rs.34,000/- remitted by the respective subscribers have been misappropriated by the petitioner herein. Investigation is pending. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The Vairajathan Kuries has been mis-managed by its proprietors. It is not a case of the petitioner not remitting the amount; but it is a case of the Vairajathan Kuries not maintaining proper accounts of the amounts remitted by its subscribers.

3. It is the petitioner's case that he had received the amounts and remitted the amounts to the Vairajathan Kuries. If the payments are remitted to the account of Vairajathan Kuries maintained with the Co-operative Bank, it is for the petitioner to satisfy the court that such payments have been made. At the moment and with the available inputs, I find absolutely no reason to assume that the allegations raised against the petitioner are false and are raised vexatiously. I am satisfied, in these circumstances, that it is not necessary to invoke the extraordinary equitable discretion under Section 438 Cr.P.C. The petitioner must appear before the investigating officer or the learned Magistrate having jurisdiction and seek regular bail in the ordinary course.

4. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007